UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA

In re: **ARC Venture Holding, Inc.,** **Debtors,**[1]	Case No. 08-46367 (DDB) (Jointly Administered) Chapter 7 Case Previous Chapter 11

BRIAN F. LEONARD, TRUSTEE, **PLAINTIFF** **v.** **CITY AND COUNTY OF DENVER,** **DEFENDANT**	Adv. No.: 10-4520 **CITY AND COUNTY OF DENVER'S ANSWER TO TRUSTEE'S ADVERSARY COMPLAINT**

Now comes the Defendant, City and County of Denver ("Denver") by its attorney and answers the Trustee's Adversary Complaint as follows:

1. Denver admits the allegations contained in Paragraph 1 of the Adversary Complaint.

2. Denver admits the allegations contained in Paragraph 2 of the Adversary Complaint.

3. Denver lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 3 of the Adversary Complaint and therefore denies the same.

[1] Jointly administered estates of the following Debtors: ARC Venture Holding, Inc., Case No. 08-46367; Southwest-Tex Leasing Co., Inc. d/b/a Advantage, Case No. 08-46368; Advantage Rent-A-Car, Inc., Case No. 08-46369; Coast Leasing Corp., Case No. 08-46370; Floral Leasing Corp., Case No. 08-46371; Iliad Leasing Corp., Case No. 08-46372; Miso Leasing Corp., Case No. 08-46373; Nugget Leasing Corp., Case No. 08-46374; Okra Leasing Corp., Case No. 08-46375; Rainier Leasing Corp., Case No. 08-46376; San Antonio Rental & Leasing Co., Inc., Case No. 08-46377; Steamboat Springs Rental & Leasing Co., Inc., Case No. 08-46379; Sun Leasing Corporation, Case No. 08-46380; Tradewinds U-Drive, Inc., Case No. 08-46383; Ute Leasing Corporation, Case No. 08-46384 (collectively, the "Debtors").

4. Denver admits the allegations contained in Paragraph 4 of the Adversary Complaint and further answers that Debtor Steamboat Springs Rental and Leasing d/b/a Advantage Rent A Car ("Steamboat Springs Rental and Leasing") was licensed to conduct business in Denver, Colorado.

5. Denver admits that Steamboat Springs Rental and Leasing operated retail rental car offices within the City and County of Denver Colorado.

   As to the remaining allegations in Paragraph 5 of the Adversary Complaint, Denver lacks sufficient knowledge or information to form a belief as to the truth of those allegations and therefore denies the same.

6. Denver admits the allegations contained in Paragraph 6 of the Adversary Complaint.

7. Denver admits that this Court has subject matter jurisdiction over matters of this type and that this would be a core proceeding.

   Denver denies that the Trustee has properly served Denver with a Summons and Adversary Complaint in the manner required by 7004(6) of the Federal Rules of Bankruptcy Procedure and therefore this Court lacks personal jurisdiction over Denver.

8. Denver admits receiving the following payments paid by checks drawn on the account of Steamboat Springs Rental and Leasing Co. Inc.:

Check Amount	Check Number	Date Received
$174,629.91	Check No. 231965	September 11, 2008
$294,953.22	Check No. 232142	October 27, 2007
$293,629.14	Check No. 232144	October 31, 2008

   Denver lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 8 and therefore denies the same.

   Further answering, Denver states that these payments represented trust fund sales taxes collected by Debtors from retail customers on Denver's behalf and paid over to Denver with monthly sales tax returns. These monies were never property or an interest in property of the Debtors and were at all times property of Denver and held in trust for Denver until remitted with returns.

9. Denver denies the allegations contained in Paragraph 9.

Further answering, Denver states that these payments represented trust fund sales taxes collected from Debtors' retail customers on Denver's behalf and paid over to Denver with monthly sales tax returns. These monies were never property or an interest in property of the Debtors and were at all times property of Denver and held in trust for Denver until remitted with returns.

10. Denver admits the allegations in Paragraph 10.

11. Denver denies the allegations contained in Paragraph 11.

12. Paragraph 12 is a legal conclusion to which an answer is not required. To the extent Paragraph 12 contains allegations of fact, Denver denies the same.

AFFIRMATIVE DEFENSES:

I. The Court Lacks Personal Jurisdiction Over the City and County of Denver.

13. The Court lacks personal jurisdiction of Denver as Steamboat Springs Rental and Leasing has not properly served the Mayor of Denver as required by Denver Charter §2.2.4 incorporated and applicable to this matter pursuant to Rule 7004(6) of the Federal Rules of Bankruptcy Procedure.

14. The Court should dismiss this case pursuant to Federal Rules of Civil Procedure 12(b)(2) and (5) made applicable to this proceeding pursuant to Federal Rules of Bankruptcy Procedure 7012(b).

II. The Trust Fund Taxes at Issue Were Not Property or an Interest in Property of the Debtors' Estate.

15. The sales taxes that Steamboat Springs Rental and Leasing charged to and collected from its retail customers and subsequently paid over to Denver with the required tax return were trust fund taxes that were never property or an interest in property of the Debtors' estate.

16. The sales taxes that Steamboat Springs Rental and Leasing charged to and collected from its retail customers were at all times prior to payment over to Denver public monies, the property of Denver, and held in trust for the sole use and benefit of Denver per Denver Revised Municipal Code § 53-40.

III. The Trustee has Failed to State a Claim.

17. The Trustee in bringing this action has failed to state a claim for which relief can be granted.

18. The Court should dismiss this case pursuant to Federal Rules of Civil Procedure 12(b)(6) made applicable to this proceeding pursuant to Federal Rules of Bankruptcy Procedure 7012(b).

IV. Debtors' Sales Tax Payments Were Payments in the Ordinary Course of Business and Are Not Subject to Avoidance.

19. To the extent Steamboat Springs Rental and Leasing charged, collected, and remitted sales taxes to Denver on its retail car rental transactions, these payments were made in the ordinary course of business thereby placing the payments in the category of transaction which the Trustee may not avoid per the proscription under 11 U.S.C. §547(c)(2).

WHEREFORE, the Defendant City and County of Denver asks this Court to:

1. Dismiss this action with prejudice;

2. Enter an Order declaring that the trustee tax monies at issue in this matter were never property or an interest in property of the Debtors' estate to which a preference avoidance action would apply;

3. Enter an Order declaring that the Trustee may not avoid the transactions at issue;

4. Award the City and County of Denver its costs and fees associated with this action;

5. Grant other such relief as this Court deems warranted and just.

Dated: December 29, 2010

Respectfully submitted,

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City and County of Denver

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